

1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

3 IN THE MATTER OF, Case No. 13-53846
4 CITY OF DETROIT, MI Detroit, Michigan
November 7, 2014
_____/ 1:00 p.m.

5
6 IN RE: TRIAL RE: BENCH DECISION
BEFORE THE HONORABLE STEVEN W. RHODES
7 TRANSCRIPT ORDERED BY: ROBIN WYSOCKI

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1 (Court in Session)

2 THE CLERK: All rise. Court is in session. You may
3 be seated. Case number 13-53846, City of Detroit, Michigan.

4 THE COURT: Good afternoon.

5 THE ATTORNEYS: Good afternoon, Your Honor.

6 THE COURT: In Chapter 9 of the United States
7 Bankruptcy Code, the Federal Government offers help to the
8 states in resolving a problem that under our constitutional
9 structure the states cannot solve by themselves. That problem
10 is the adjustment of the debts of an insolvent municipality.

11 Today this Federal Bankruptcy Court grants that help to
12 the State of Michigan and the City of Detroit. The Court
13 concludes that the city's eighth amended plan of adjustment
14 meets the legal requirements for confirmation. Accordingly,
15 the Court confirms the plan.

16 The Court also concludes that the settlements that are
17 incorporated into the plan of adjustment are reasonable, fair,
18 and equitable. Accordingly the Court approves those
19 settlements.

20 The Court -- the Court also concludes that the city's
21 proposed exit financing meets the requirements of the
22 Bankruptcy Code, therefore, the Court approves the exit
23 financing.

24 This oral opinion will first address the settlements.

25 There are no outstanding objections to the settlements except
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1 for the ASF recoupment portion of the pension settlement.

2 Nevertheless the city has requested the Court to determine
3 that they are reasonable, fair, and equitable.

4 The Court will then review the major issues relating to
5 confirmation. These are, good faith, best interest of
6 creditors, professional fees, unfair discrimination, fair and
7 equitable, and the treatment of constitutional claims against
8 the city.

9 The Court will then briefly review the city's request for
10 approval of the exit financing. The Court will then address
11 feasibility and then conclude.

12 The Court will soon issue a supplemental written opinion
13 that will more fully address all of the issues. Please settle
14 in, this will take some time. We may take a brief stand up
15 break at some point.

16 After the opinion, the Court will take a recess and then
17 reconvene to discuss next steps with the attorneys. Nearly
18 every creditor group filed litigation against the city seeking
19 the full protection of its claims as well as objections to
20 confirmation. The plan is largely comprised of the
21 settlements of those claims and objections.

22 With only one exception every group of creditors
23 represented by counsel has settled with the city. That
24 exception is a small group of creditors with constitutional
25 claims against the city.

1 The Court previously approved the settlement with the
2 swap counter parties. Here are the settlements that the Court
3 approves today at the city's request.

4 The grand bargain settlement which includes the pension
5 settlement, the state contribution agreement, and the DIA
6 settlement. The OPEB settlement, the 36th District Court
7 settlement, the UTGO settlement, the LTGO settlement, the
8 Syncora settlement, and the FGIC settlement.

9 Several factors are relevant to the reasonableness of
10 each of these settlements and are common to all of them.
11 These factors include all of the creditors in these
12 settlements had filed and vigorously pursued objections to the
13 plan. All of the creditors were highly motivated to pursue
14 these objections and had the resources to do so. This would
15 include the appellate process if necessary.

16 Many of the objections raised issues that were novel,
17 complex, both legally and factually, and potentially had
18 significance beyond this case. All of the parties were well
19 represented and well prepared for litigation.

20 For the city litigating with creditors was incompatible
21 with its goal of a prompt and efficient exit from bankruptcy
22 and start to its revitalization. For the city the stakes in
23 any of the creditor litigation were high. Even a single loss
24 to any major creditor would seriously compromise its goals in

25 this case.

1 Each settlement was at arm's length and hard fought.
2 Each required perserverance, creativity, and compromise by all
3 involved. Each of those considerations played a role in each
4 of these settlements.

5 The cornerstone of the plan is the grand bargain. It is
6 -- it is a collection of settlements among a number of parties
7 with an interest in the city's two pension plans and in
8 protecting the city's art. These parties include the Official
9 Committee of Retirees, the General Retirement Systems, the
10 GRS, the Police and Fire Retirement Systems, the PFRS, the
11 American Federation of State, County, and Municipal Employees,
12 AFSCME, the United Auto Workers Union, the Detroit Retired
13 City Employees Association, the Retired Detroit Police Members
14 Association, the Retired Detroit Police and Firefighters
15 Association, the Detroit Police Lieutenants and Sergeants
16 Association, the Detroit Police Command Officers Association,
17 the Detroit Police Officers Association, the Detroit
18 Firefighters Association, the State of Michigan, a number of
19 charitable foundations, and the Detroit Institute of Arts.

20 The settlements represented in the grand bargain are, the
21 pension settlement, the state contribution agreement, and the
22 DIA settlement. The plan of adjustment reflects the grand
23 bargain in its treatment of Class 10 which consists of the
24 PFRS claims and Class 11 which consists of the GRS claims.

25 The State of Michigan, a number of charitable

1 foundations, and the Detroit Institute of Arts, and a number
2 of individuals will contribute to the city's two pension plans
3 a total value of \$816,000,000 over 20 years.

4 The key points of the pension settlement are, an allowed
5 claim amount of under funded accrued actuarial liability, the
6 UAAL will be \$125,000,000,000 for PFRS, and 1.879 billion for
7 GRS. And for PFRS, I meant to say 1.25 billion.

8 Through June 30, 2013, the pension plans will use a 6.75%
9 discount rate to value the liabilities and a 6.75% assumed
10 investment return -- return rate to estimate future growth of
11 their assets. The pension plans will be frozen as of July 1,
12 2014.

13 Active employees continuing to work for the city after
14 July 1, 2014 will have benefits under the new hybrid pension
15 plans. The pension formulas contained in the new hybrid plans
16 are less generous than those in the present plans.

17 Each pension claimant will receive the adjusted pension
18 amount. For PFRS retirees this means no reduction in the
19 accrued pension benefit amount, but a 45% reduction in the
20 cost of living amount, the COLA.

21 For GRS retirees the adjusted pension amount is a 4.5%
22 reduction in the accrued pension benefit amount and
23 elimination of COLA. Some GRS retirees will be subject to an
24 annuity savings fund recoupment. Because some parties have

1 separately later.

2 There are provisions for restoration of pension benefit
3 payments in certain circumstances. For 2013 -- sorry, 2023,
4 the pension funding targets are, 70% for GRS, and 78% for
5 PFRS. For 2053, in 40 years, the targets are 100% for each.
6 PFRS and GRS will each have an investment committee that will
7 make recommendations to and in certain circumstances approve
8 the actions of their boards of trustees.

9 Until June 30, 2023, the parties may not amend the
10 terms, conditions, and rules of the GRS and the PFRS relating
11 to the calculation of pension benefits, the investment return
12 assumptions, or the contributions to the pension systems. The
13 pension classes voted to accept the plan by 82% in Class 10,
14 PFRS, and 73% in Class 11, GRS.

15 Despite the strong votes in favor of the plan, the
16 treatment of the pension claims in the city's plan of
17 adjustment has been a significant issue in the case. In the
18 Court's eligibility opinion it held that the federal
19 bankruptcy power could impair pension rights in a municipal
20 case, even if the state constitution protects them. The Court
21 stands by that decision.

22 Now, at the confirmation stage, the Court must determine
23 whether the plan's treatment of pension claims meets the legal
24 requirements for plan confirmation and settlement approval.

25 The plan confirmation issues include good faith, best interest
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1 of creditors, feasibility, and others. The Court will address
2 those questions later.

3 It will now address whether the pension settlement is a
4 reasonable settlement. Despite the acceptance of the plan by
5 the pension classes, many pension claimants still strongly
6 oppose the impairment of their pension rights in this
7 bankruptcy.

8 They believe that under the Michigan Constitution their
9 pension rights are not subject to impairment. They credibly
10 state that they worked hard for the city, that they did
11 nothing wrong, and that these impairments will cause them real
12 hardship.

13 Some also argue that the pension impairments in the plan
14 of adjustment are unnecessary because the pension plans are in
15 fact fully funded. They further argue that if the pension
16 plans are under funded the city should sell the art at the
17 Detroit Institute of Arts, or other city assets.

18 Many of these objecting parties took the time to come to
19 Court to give a strong sincere and personal voice to their
20 objections. The Court finds that the pension settlement is a
21 reasonable settlement and overrules those objections to
22 confirmation and to the pension settlement.

23 The several representatives of the pension classes
24 appealed this Court's eligibility decision to the Court of

1 eligibility decision was correct and should be affirmed.

2 To determine the reasonableness of the settlement it is
3 incumbent upon this Court to estimate the parties' likelihood
4 of success on appeal. That is challenging here. On balance
5 the Court estimates that the pension creditors' chances of
6 success on appeal were in the range of 25%.

7 The next step would be to determine each side's best case
8 scenario. For the city that would plainly be to prevail on
9 appeal and to continue in this Chapter 9. For the pension
10 claimants however, the best case scenario is much less clear.
11 The city would still have no ability to pay their claims even
12 if those claimants were to prevail on appeal.

13 These considerations suggest that it is a vast
14 understatement to say that the pension settlement is
15 reasonable, it borders on the miraculous. No one could have
16 foreseen this result for the pension creditors when the city
17 filed this case. The plan's only -- the plan's proposal is
18 the only possible -- is only possible because of the pension
19 settlement and the grand bargain.

20 The pension reductions in the pension settlement are
21 minor compared to any reasonable -- reasonably foreseeable
22 outcome for these creditors without the pension settlement and
23 the -- and the grand bargain. At the same time, the Court
24 must acknowledge that these pension reductions will cause real
25 hardship and in some cases it is severe.

1 This bankruptcy, however, like most is all about the
2 shared sacrifice that is necessary because the city is
3 insolvent and desperately needs to fix its future. All of the
4 city's unsecured creditors are making sacrifices. Others
5 sacrificed too, including the city's residents and visitors
6 and even the State of Michigan and its residents. Even the
7 city's professionals are now contributing to this process and
8 to the city's future.

9 As noted, substantial majorities of the two pension
10 classes accepted the necessity of shared sacrifice for the
11 common good of the city. That collective judgment is entitled
12 to substantial consideration here. The Court finds that the
13 pension settlement is a reasonable settlement and approves it.

14 The Court will now address the annuity savings fund
15 recoupment part of the pension settlement. In the city's
16 longstanding ASF program, GRS employees could voluntarily
17 contribute a percentage of their gross pay to a separate
18 pension account.

19 The GRS then invested those contributions with the other
20 GRS assets. Each participant's ASF account increased in value
21 based on the participant's contributions and the interest
22 credited to that account.

23 For many years the GRS credited interest in each
24 participant's ASF account at the assumed rate of return even
25 when the actual rate of return was less than that. The city

1 claims that this diversion of assets increased the GRS
2 unfunded liability. It claims that it is therefore entitled
3 to recoupment of the excess interest credits from the
4 participants to offset that increased unfunded liability.
5 This in turn would reduce the pension cuts to the GRS
6 retirees.

7 The city calculates that the total of this claim is
8 approximately \$387,000,000. The GRS and the ASF participants
9 assert that there is no basis for recoupment. The parties
10 have settled this dispute.

11 The key points are, the ASF recoupment amount for each
12 ASF participant will be the amount of excess interest that the
13 GRS credited to the participants between July 1, 2003, and
14 June 30, 2013. The GRS will amortize each ASF participant's
15 recoupment over the participant's life expectancy with
16 interest at 6.75% to be deducted from the participant's
17 monthly pension check or ASF account.

18 The plan of adjustment caps the ASF recoupment at 20% of
19 the highest value of each participant's ASF account between
20 July 1, 2003, and June 30, 2013. An additional cap limits the
21 combined pension reduction and ASF recoupment to 20% of such
22 participant's annual pension.

23 Each participant is subject -- that is subject to the ASF
24 recoupment will have the option to pay the ASF recoupment
25 amount in a single lump sum cash payment. The settlement will

1 net approximately \$190,000,000 to the GRS which is about 49%
2 of the city's calculation of its claim here.

3 Several participants object to the ASF recoupment in the
4 plan of adjustment. They argue one, the ASF recoupment
5 violates the applicable statute of limitations. Two, under
6 state law, the city's recoupment claim has no merit. Three,
7 they did nothing that justifies imposing this liability on
8 them. Four, the GRS board did nothing wrong. Five, the city
9 has no standing to assert the claim. Six, they do not consent
10 to the lesser treatment of their pension claim in Class 11
11 that results from the recoupment. Seven, the treatment of the
12 city's recoupment claim in the plan violates their right to be
13 heard on the merits. Eight, the city did not properly
14 disclose the 6.75% interest rate. Nine, the interest rate is
15 illegal, usurious, and unfair. And ten, the Court should
16 carve the ASF settlement out of the plan and then approve the
17 plan.

18 The Court overrules these objections. The ASF recoupment
19 settlement is a part of the pension settlement and therefore
20 part of the grand bargain. It is also a part of the city's
21 plan of adjustment.

22 The Court therefore has only two issues to consider. The
23 first is whether the settlement is reasonable. The second is
24 whether the plan provisions that incorporate the ASF

25 settlement violate the Bankruptcy Code.

1 It is not for the Court to rule on the merits of the
2 city's ASF recoupment claim or the merits of the participants'
3 defenses. The Court only reviews the parties' positions to
4 determine whether the settlement is reasonable.

5 The Court finds substantial merit in the city's
6 recoupment claim. The legal authority of the GRS board to
7 credit interest in excess of the actual rate of return was
8 doubtful. The prudence of that practice was even more
9 doubtful.

10 The Court also considers that the asserted defenses have
11 less merit. On balance it appears that the city's recoupment
12 claim would have a reasonable likelihood of success, 60 to
13 70%. However, the length, complexity, and expense of
14 litigation on the claim would be substantial. Should the city
15 prevail, issues of collectibility against ASF participants
16 could also be substantial depending on the structure of the
17 final judgment.

18 The Court also considers that the settlement is a part of
19 a much larger settlement of all pension related issues. As
20 noted the class of claims affected by the settlement, Class 11
21 accepted the settlement by a vote of 73%. Finally, the Court
22 notes that the caps and other limitations on the recoupment
23 amount that the parties negotiated should help to reduce the
24 hardship of it. Fairly weighing these factors suggests that

1 possible reasonable settlements, the Court approves it.

2 The Court will now address the state contribution
3 agreement. This agreement settles the state's potential
4 liability for under funding of the GRS and the PFRS plans
5 under the pension non-impairment provision of the Michigan
6 Constitution, Article 9, Section 24. It also supports the
7 city's plan of adjustment.

8 The key points of this agreement are, the State of
9 Michigan will immediately contribute 194.8 million dollars.
10 The city, GRS, and PFRS will establish an income stabilization
11 program to insure that pension reductions do not cause any
12 retirees to fall into poverty.

13 The income stabilization program will receive a portion
14 of the payments on the stub UTGO bonds which the Court will
15 describe later. The pension claimants will release the state
16 and its related entities from liability and cease litigation
17 related to the Chapter 9 case, Public Act 436, or the pension
18 provisions of the Michigan Constitution.

19 The claim settled here would not be a frivolous claim.
20 The language of Article 9, Section 24 of the Michigan
21 Constitution can be read to support the claim. The
22 non-impairment language is absolute and the state is in a much
23 better position than retirees to monitor and enforce the
24 non-impairment of municipal pensions.

25 There is nonetheless no -- no precedent for such a claim.
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1 Any litigation of it would be long, complex, and expensive.
2 If the state loses, it would be responsible for the Detroit
3 pension under funding of \$3,000,000,000. It might also then
4 be responsible for the entire unfunded liability of every
5 municipality in the state. That would be disastrous for the
6 state.

7 The question then is whether the state's contribution is
8 a fair settlement to obtain a release of any liability that it
9 might have on this claim. As noted, the contribution is about
10 \$195,000,000. The novelty and the lack of precedent make
11 judging the likelihood of success of this claim challenging.
12 The litigation would, however, be high risk for all concerned.

13 The parties have settled and with the help of the DIA and
14 the charitable foundations. The many skilled and capable
15 representatives of the pension claimants have concluded that
16 the -- that the state contribution agreement is fair. They
17 recommended it to their pension claimants who in turn voted
18 strongly to support it and to release their potential
19 litigation claims.

20 In the circumstances the Court finds that it is
21 reasonable, although perhaps at the lowest end of the range of
22 reasonable settlements, the Court approves it. For reasons
23 that the Court will explain in its written opinion, the Court
24 also approves the release of the state and the state related
25 entities.

1 The Court will now address the DIA settlement. This
2 settlement resolves all of the disputes relating to the rights
3 of all parties with respect to the DIA and the art.

4 The key points of this settlement are, the DIA will
5 secure and guarantee commitments for contributions to the GRS
6 and the PFRS of \$100,000,000 over 20 years. Various local and
7 national charitable foundations will contribute \$366,000,000
8 to the GRS and the PFRS over 20 years. The city will transfer
9 the art to the DIA Corp. which will hold the art in perpetual
10 charitable trust for the benefit of the people of the city and
11 the state.

12 Two issues arise here. The first is whether the DIA
13 settlement is a fair settlement. The Court will address that
14 issue now. The second is whether the -- whether this
15 settlement is consistent with the best interest of creditors
16 test. The Court will address that issue later.

17 Addressing the fairness of the settlement, the Court will
18 first examine the relative strengths of the parties'
19 positions. Both the Michigan Attorney General and the DIA
20 itself take the position that the DIA art is subject to a
21 trust that prohibits the city from selling it to pay debts and
22 places it beyond the creditors' reach.

23 The DIA also asserts that the donors of many of the
24 pieces of art had imposed specific transfer restrictions on

1 especially impressed with the testimony of Ms. Erickson on
2 these points and with the historical documentary evidence that
3 the DIA cited in its brief and that was admitted into
4 evidence.

5 The evidence further establishes that nationally accepted
6 standards for art museums prohibit the de-acquisition of art
7 to pay debt. The creditors also admitted, perhaps grudgingly,
8 that no creditor had ever considered the value of the art as a
9 possible source of repayment when it decided to lend money to
10 the city or to acquire the city's debt.

11 On the other hand the creditors did submit substantial
12 evidence and legal grounds supporting the contrary view that
13 the city can legally sell or monetize the DIA art. On balance
14 the Court concludes that in any potential litigation
15 concerning the city's right to sell the DIA art, or concerning
16 the creditors' right to access the art to satisfy its claims,
17 the positions of the Attorney General and the DIA almost
18 certainly would prevail.

19 However, the evidence also established once -- once again
20 that any such litigation would have taken years to achieve the
21 result and would have been costly to pursue. It also would
22 have been difficult for the city to endure the delay and
23 expense while at the same time attempting to revitalize
24 itself.

1 that they would vigorously contest any attempt to sell the
2 art. Credible evidence also establishes that any attempt by
3 the city to sell its art might result in a cancellation of the
4 county millage taxes that support the DIA's operations and
5 constitute almost 70% of the DIA's budget.

6 The Court concludes that the DIA settlement was a most
7 reasonable and favorable settlement for the city and its
8 pension creditors, the Court readily approves it.

9 Accordingly, the Court approves all aspects of the grand
10 bargain.

11 The Court will now review the OPEB settlement. The city
12 is currently obligated to its retirees for other
13 post-employment benefits, OPEB. This includes health care and
14 life insurance benefits.

15 The city claimed that the OPEB liability is 3.8 billion
16 dollars, the retiree committee asserts that it is
17 \$5,000,000,000. The difference largely results from
18 differences in certain actuarial assumption -- assumptions and
19 discount rates.

20 They also disagreed about how to account for
21 post-petition OPEB payments. Either value, however, would
22 make the OPEB liability the city's largest single liability.
23 The parties settled.

24 The key points of this settlement are, the allowed amount
25 of the OPEB claim is 4.3 billion dollars. Of that 2.2 billion

1 is for the PFRS retirees, and 2.1 billion is for the GRS
2 retirees.

3 The city will establish two voluntary employees
4 beneficiary associations known as VEBAs to provide
5 post-employment benefits to retirees and certain of their
6 beneficiaries and dependents. The city will distribute new B
7 notes and other assets to fund the VEBAs. Various sources
8 will fund the start up costs for the VEBAs. The city will
9 have no further responsibility to provide other
10 post-employment benefits.

11 The plan treats the OPEB claim in Class 12. The
12 estimated recovery for Class 12 OPEB claims is 10%. Class 12
13 accepted the plan.

14 The retiree committees' OPEB litigation sought to
15 prohibit the city from terminating OPEB benefits. It asserted
16 largely equitable grounds relating to the hardship that
17 terminating these benefits would naturally cause to retirees.
18 There did not appear to be any substantial legal grounds for
19 the requested relief. The city's likelihood of success was
20 very high.

21 The OPEB claim is an unsecured claim. Unlike the
22 retirees' pension claims, the OPEB claims had no arguable
23 constitutional protection. The 10% recovery for Class 12, the
24 OPEB class, is approximately the recovery of other unsecured
25 creditors. The class voted to accept it by over 88%. The

1 Court finds that the OPEB settlement is reasonable, the Court
2 approves it.

3 The Court will now discuss the 36th District Court
4 settlement. When the city filed bankruptcy the 36th District
5 Court was defending several employment related claims.
6 Because the city is legally required to fund the 36th District
7 Court, it would ultimately be responsible for any judgments
8 against the 36th District Court in these proceedings -- in
9 those proceedings.

10 The parties in the litigation settled with the city. The
11 aggregate liquidated amount of the claim is \$6,000,000. These
12 claims are in Class 17. Their recovery is 33%. They accepted
13 the vote -- the plan by the vote of 100%. The Court finds
14 that this settlement is reasonable, the Court approves it.

15 The Court will now address the UTGO bond settlement.
16 Pre-petition the city defaulted -- sorry, post-petition the
17 city defaulted on its obligation to make payments on these
18 unlimited tax general obligation bonds.

19 The bond insurers paid the claims on the defaulted
20 payments. In the resulting litigation, the UTGO bond
21 creditors claimed that portions of the city's property tax
22 revenues could only be used to pay their claims and that they
23 had a lien on that stream of revenues.

24 They also asserted that this revenue was "special

1 city opposed the litigation contending that the UTGO claims
2 were unsecured claims. The city and these bond insurers
3 settled.

4 The key points of this settlement are, the allowed claim
5 of the UTGO bonds will be \$388,000,000. Just under
6 \$288,000,000 of the UTGO bonds will be restructured and
7 reallocated among the holders of the bonds.

8 Approximately \$43,000,000 of the existing UTGO bonds
9 which the parties have called stub UTGO bonds, will be
10 reinstated to existing holders. However, these holders'
11 rights to payment on those stub UTGO bonds will be dedicated
12 to the income stabilization program that is part of the state
13 contribution agreement which the Court mentioned earlier.

14 The plan classifies the UTGO bonds in Class 8. The
15 recovery is 74%. The class voted to accept the plan by a vote
16 of 87%. The UTGO settlement, 74% is the highest settlement
17 percentage that the city agreed to for a class of unsecured
18 creditors.

19 The city's chance of success on the merits of the
20 litigation was a coin toss. On the other hand, the
21 consequence to the city of losing on this issue could have
22 been dire. It would have lost access to a portion of its
23 property tax revenue that the UTGO bond holders claimed. The
24 Court concludes therefore, that the UTGO settlement is within

1 at the upper end of that range. The Court concludes that
2 these circumstances do warrant the premium that this
3 settlement reflects, the Court therefore approves it.

4 The Court will now discuss the LTGO settlement. The city
5 has almost \$164,000,000 in outstanding limited tax general
6 obligation bonds called LTGO bonds.

7 Post-petition the city defaulted on its obligation to
8 make interest payments on the LTGO bonds. On both occasions
9 Ambac Assurance Corporation, the insurer of two-thirds of the
10 LTGO bonds paid claims on the defaulted payments.

11 In the resulting litigation, the LTGO claimants argued
12 that their claims were entitled to secured treatment and that
13 state law requires the city to pay LTGO bond obligations as a
14 first budget obligation. The city asserted that the LTGO
15 claims were unsecured claims. The parties settled their
16 disputes.

17 The key points of this settlement are, the city may
18 either issue new LTGO bonds in the amount of \$55,000,000, or
19 pay \$55,000,000 in cash using exit financing. The city has
20 elected to make the \$55,000,000 cash payment from the exit
21 financing.

22 The city will also distribute 17.3 million dollars in
23 excess B notes to the holders of the LTGO bond claims. The
24 class -- I'm sorry, the plan classifies the LTGO bond claims
25 in Class 7. The recovery for Class 7 is 41%. The class

1 accepted the plan.

2 The Court's judgment is that the city had a substantial
3 likelihood of prevailing in the LTGO litigation. Perhaps a
4 75% chance. The 41% LTGO settlement is nevertheless within
5 the range of reasonable settlements, the Court approves it.

6 The COPS settlement. The Court will now address the
7 Syncora settlement and the -- and the FGIC and COPS
8 settlements. Both of these are in part addressed in Class 9
9 of the plan.

10 Each Class 9 claim holder will receive its pro rata share
11 of almost \$98,000,000 in new B notes, \$88,000,000 in new C
12 notes, and \$25,000,000 in settlement credits. The settlement
13 credits may be used to offset up to 50% of the purchase price
14 of certain eligible city assets. Syncora and the city have
15 settled their many disputes.

16 The key points of this settlement are, as a settling
17 Class 9 claim holder, Syncora will receive 23.5 million
18 dollars in new B notes, 21.3 million dollars in new C notes,
19 and 6.25 million dollars in Class 9 settlement credits. The
20 city will make an additional \$5,000,000 cash payment to
21 Syncora.

22 Syncora and the city will enter into a development
23 agreement under which a subsidiary of Syncora will be granted
24 a five year option to acquire and develop certain properties
25 owned by the city. The development agreement will also

1 include a one year option for another Syncora subsidiary to
2 enter into a 30 year concession at the grand circus park
3 parking garage. This agreement includes specified financial
4 and capital expenditure requirements.

5 The city will assume the Detroit Windsor tunnel lease
6 with a Syncora subsidiary and extend it to December 2040.
7 This lease will be amended to include certain provisions and
8 requirements for capital expenditures and operating and
9 financial reporting.

10 The settlement resolves Syncora's objections to
11 confirmation as well as its several appeals that Syncora had
12 pursued relating to eligibility, the quality of life loan,
13 mediation, and the casino revenue. The Syncora settlement
14 also frees up \$162,000,000 in B notes for the LTGO, OPEB, and
15 other unsecured creditors.

16 The development agreement is a substantial benefit to the
17 city. James Doak, an expert from Miller -- the Miller,
18 Buckfire firm that the city retained testified that in his
19 opinion the business aspects of the Syncora settlement are a
20 reasonable exercise of the city's business judgment and the
21 Court credits that testimony.

22 Syncora's recovery is about 13% and is about the same as
23 FGIC's settlement recovery to be discussed next. The recovery
24 for other unsecured creditors in Class 14 is also similar.

25 Accordingly, the Court readily finds that this settlement is
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1 reasonable and approves it.

2 The city, FGIC, which is the insurer of the COPS, and the
3 COPS holders, have also entered into a settlement agreement.
4 The key points of this settlement are, FGIC will opt into the
5 Class 9 settlement and receive 74.2 million in new B notes,
6 67.2 million in new C notes, and 19.75 million in Class 9
7 settlement credits.

8 FGIC and the COPS holders will divide the consideration
9 provided under the Class 9 settlement option. FGIC and the
10 city will also enter into a development agreement for the Joe
11 Louis Arena site.

12 To settle FGIC's claims against the city relating to the
13 swap agreements, FGIC will have an allowed Class 14 claim of
14 6.11 million dollars. In addition the Downtown Development
15 Authority will assign to FGIC its rights to its distribution
16 of new B notes under the plan of adjustment for its 33.6
17 million dollar Class 13 claim.

18 The city estimates that FGIC will receive approximately
19 4.5 million dollars in new B notes in settlement of its swap
20 related claims. This settlement resolves the objections to
21 confirmation that FGIC and the COPS holders filed. These
22 objections were substantial and were zealously litigated. It
23 also resolves the COPS invalidity litigation in which the city
24 sought to invalidate its obligations to the COPS holders in

25 the approximate amount of 1.5 billion dollars.

1 FGIC's recovery is 13%. The development agreement is of
2 incalculable value to the city. The Court readily finds that
3 this settlement is reasonable and approves it. That concludes
4 the Court's discussion of its approval of the settlements in
5 the city's plan.

6 The Court will now address some of the other confirmation
7 requirements that the plan must meet, including good faith,
8 best interest of creditors, and the reasonableness of attorney
9 fees. The Court will then address the requirements that apply
10 because two classes of creditors, Classes 14 and 15 rejected
11 the plan. These are whether the plan unfairly discriminates
12 and whether the plan is fair and equitable.

13 The Court will also briefly address the objections of
14 certain creditors holding constitutional claims against the
15 city. The Court will then conclude with the feasibility
16 requirement.

17 Section 1129(a)(3) requires the city to establish that it
18 proposed its plan of adjustment in good faith. When the Court
19 decided that the city was eligible to be in bankruptcy, the
20 Court found that the city acted in good faith in seeking the
21 relief that this Court can provide.

22 The good faith inquiry at this stage is largely an
23 extension of that inquiry. The Court again finds that the
24 city acted in good faith in proposing its plan of adjustment.

1 proposed its plan to achieve the objectives and -- and
2 purposes of Chapter 9. That is, to adjust the city's debts to
3 enable the city to provide adequate municipal services.
4 Second, the city filed its plan with honesty, good intentions,
5 and the reasonable expectation that the plan is feasible.
6 Third, the process that the city undertook to seek
7 confirmation of the plan was fundamentally fair to the city's
8 creditors.

9 On the first and second points, the record demonstrates
10 that the city has worked honestly, diligently, and tirelessly
11 to accomplish precisely the remedy that the Bankruptcy Code
12 establishes for municipalities, the necessary adjustment of
13 the city's debt.

14 The record also demonstrates that the city is committed
15 to maintaining its debt at a level that it can manage in the
16 long term. The testimony of several city representatives
17 directly supports these findings.

18 These include emergency manager Kevyn Orr, Mayor Mike
19 Duggan, city council President Brenda Jones, the city's Chief
20 Financial Officer John Hill, the city's Chief Information
21 Officer Beth Niblock, police Chief James Craig, and executive
22 fire commissioner Edsel Jenkins.

23 Ron Bloom's testimony, however, was particularly
24 compelling on this point. Not only for what he said, but also
25 because he testified as a representative of the retiree

1 committee.

2 He testified, "but I think one of the things the city
3 persuaded us over the course of the case was that they were
4 sincere. We didn't like what they had to say often, but we
5 felt that their commitment to revitalization was sincere. And
6 when we saw evidence of that, for instance how they were
7 treating the active workers, that was a positive sign that our
8 long term interest was going to be served and the revised
9 promises we got would eventually be honored".

10 On the third point the Court finds, that the strongest
11 evidence that the city treated its creditors in a
12 fundamentally fair way was the high level of creditor
13 consensus supporting the plan. The city's good faith in
14 proposing this plan shines with the greatest brilliance in the
15 grand bargain and in the settlements with Syncora, FGIC, and
16 the COPS holders.

17 Those settlements are more than just creditor claim
18 settlements. They create new ventures and relationships that
19 enable all of the stake holders in this case to achieve their
20 long term missions and goals.

21 This is an extraordinary accomplishment in bankruptcy and
22 an ideal model for future municipal debt restructurings. The
23 city has proven that upon confirmation it intends to implement
24 its plan of adjustment. The city has also proven its

1 revitalization. The Court finds that the city's proposed --
2 that the city proposed its plan of adjustment in good faith.

3 Section 943(b)(7) requires that the plan be in the best
4 interests of creditors. The cases generally hold that in
5 Chapter 9 this means that the creditors will receive all that
6 they can reasonably expect under the circumstances. The only
7 legal alternative to plan confirmation is dismissal because no
8 other party can file a plan of adjustment in Chapter 9, and
9 the liquidation of the municipality's assets is not permitted
10 in Chapter 9. Accordingly, the Court will also consider
11 whether the plan is a better alternative for creditors than
12 dismissal.

13 Under the plain language of Section 943(b)(7), the issue
14 is the best interest of creditors as a whole, not any
15 particular creditor or class of creditors. The Court finds
16 that the plan is in the best interest of creditors.

17 Some creditors have argued that the city could pay more
18 to creditors by raising taxes or by monetizing assets,
19 specifically the art at the DIA. No provision of law allows
20 creditors to access the DIA art to satisfy their claims,
21 whether in bankruptcy or outside of bankruptcy.

22 The market value of the art therefore is irrelevant to
23 this case. A judgment creditor's sole remedy is court ordered
24 property tax assessment process under Michigan's Revised

1 property.

2 Some creditors argue that the best interest test in
3 Chapter 9 requires the Court's full consideration of all of
4 the city's assets, including the art even if the assets would
5 not be accessible to unsecured creditors outside of
6 bankruptcy. The Court rejects this argument.

7 The legal limitation on the collection of judgments that
8 apply outside of bankruptcy also constrain the best interest
9 of creditors test in bankruptcy. Neither the Bankruptcy Code
10 nor the case law suggests otherwise. As noted, the Court --
11 I'm sorry, the city determined not to sell or monetize the DIA
12 art in the art market.

13 Under Section 904 of the Bankruptcy Code, that decision
14 is off limits to this Court. However, even if the law did
15 give the Court some authority here, the Court would not have
16 interfered with the city's decision. The city made the only
17 appropriate decision. Maintaining the art at the DIA is
18 critical to the feasibility of the city's plan of adjustment
19 and to the city's future.

20 The Court toured parts of the DIA and saw the art there
21 as well as how its many visitors were experiencing the art.
22 It also accepts the testimony of Ms. Erickson on the priceless
23 value of -- that the DIA art creates for the city, the region,
24 and the state.

1 stands at the center of the city as an invaluable beacon of
2 culture, education for both children and adults, personal
3 journey, creative outlet, family experience, worldwide visitor
4 attraction, civic pride and energy, neighborhood and community
5 cohesion, regional cooperation, social service, and economic
6 development.

7 Every great city in the world actively pursues these
8 values. They are the values that Detroit must pursue to
9 uplift, inspire, and -- and enrich its residents and its
10 visitors. They are also the values that Detroit must pursue
11 to compete in the national and global economy to attract new
12 residents, visitors, and businesses.

13 To sell the DIA art would only deepen Detroit's fiscal
14 and economic and social problems. To sell the DIA art would
15 be to forfeit Detroit's future. The city made the right
16 decision.

17 The city also rejected the concept of using the art as
18 collateral for a loan to pay creditors for two reasons.
19 First, that proposal would substitute debt for debt and would
20 not help the city. Second, if the city defaulted, it might
21 lose the art. The city made the -- the right decision here
22 too.

23 Beyond that the record reflects that the city has made
24 reasonable efforts to monetize other assets, including the

1 certain parking properties, the Joe Louis Arena property, and
2 certain other property that it no longer needs.

3 It also entered into the Great Lakes Water Authority
4 memorandum of understanding with Wayne, Oakland, and Macomb
5 counties which benefits all creditors. The Court finds that
6 the city has made reasonable efforts to monetize its assets to
7 satisfy the best interests of creditors test.

8 The evidence also establishes that raising taxes is not a
9 viable option for the city. In the eligibility opinion, the
10 Court found that the city cannot legally increase its tax
11 rates. Mayor Duggan testified that the likelihood of the
12 people of Detroit, or the state legislature voting to raise
13 taxes is remote.

14 Further, a property tax increase would produce very
15 little additional income. The Mayor testified that taxes in
16 Detroit are among the highest relative to the surrounding
17 communities and the city services are comparatively low.

18 Kevyn Orr credibly testified that the city is at tax
19 saturation and raising taxes would likely add to the
20 population decline.

21 The evidence also establishes that the plan is better,
22 indeed much better -- a better -- indeed much better
23 alternative for creditors than dismissal. Significant city
24 obligations would become immediately due in that event.

1 only remedy is the property tax assessment remedy under the
2 Revised Judicature Act. It is easy to foresee that a great
3 number of creditors would race for that relief and the result
4 would be chaos and an administrative nightmare for all
5 involved.

6 The city's reinvestment and revitalization initiatives
7 would stall. The pension UAAL and the OPEB claims in the
8 billions of dollars would go unresolved.

9 There is no more money available for creditors in the
10 city's already tight budget projections. The Court's
11 feasibility expert so testified as the Court will review here
12 shortly.

13 Every dollar is accounted for in providing necessary
14 services in implementing the city's necessary RRI's and in
15 repaying plan obligations. All of those cash uses are
16 essential to the city's future. Accordingly, the Court finds
17 that the plan will provide creditors all that they can
18 reasonably expect under the circumstances and that the plan is
19 in their best interests.

20 The Court will now discuss the issue of fees. As a
21 condition of confirmation, Section 943(b)(3) requires that,
22 "all amounts to be paid by the debtor, or by any person, for
23 services or expenses in the case, or incident to the plan,
24 have been fully disclosed and are reasonable".

1 entered an order appointing a fee examiner and requiring him
2 to act, "to assure the Court, the city, the creditors, and the
3 public that the city's professional fee expenses are fully
4 disclosed and are reasonable as required by Section
5 943(b)(3)".

6 The fee examiner has filed quarterly reports that have
7 fully disclosed the city's professional fee expenses through
8 June 2014. Under the plan of adjustment the process will
9 continue as necessary to address fees incurred through the
10 effective date of the plan.

11 Two issues are raised here. Does Section 943(b)(3)
12 require that all of the city's professional fees in the case
13 be disclosed and reasonable, or only the fees that are unpaid
14 as of confirmation. Two, should the Court accept without
15 further review the fee examiner's findings that the fees have
16 been reasonable.

17 The Court concludes that Section 943(b)(3) does require
18 that all of the city's professional fees in connection with
19 the case be disclosed and reasonable. The Court further
20 concludes that it is not appropriate to accept without further
21 judicial review the fee examiner's findings that the fees have
22 been reasonable.

23 The plain language of Section 943(b)(3) requires only
24 that fees, "to be paid" must be reasonable, yet the Court

1 unpaid fees in applying Section 943(b)(3). It is an arbitrary
2 line and may be subject to manipulation.

3 The Supreme Court's decision in American United Mutual
4 Life Insurance Company v City of Avon Park, Florida is highly
5 instructive on this question. In that case the Supreme Court
6 discussed at length the legal and equitable necessity for the
7 Bankruptcy Court to review a municipality's professional fees.

8 It is a lengthy passage, but worth quoting because it is
9 powerful and it will also be relevant to the discussion on the
10 fair and equitable issue later. The Court will omit the case
11 citations.

12 "A Bankruptcy Court is a Court of equity and is guided by
13 equitable doctrine -- doctrines and principals, except insofar
14 as they are inconsistent with the act. A Court of equity may
15 in its discretion in the exercise of the jurisdiction
16 committed to it, grant or deny relief upon performance of a
17 condition which will safeguard the public interest.

18 These principals are a part of the control which the
19 Court has over the whole process of formulation and approval
20 of plans of composition or reorganization and the obtaining of
21 assents thereto. Where such investigation discloses the
22 existence of unfair dealing, breach of fiduciary obligations,
23 profiting from a trust, special benefits for the reorganizers,
24 or the need for protection of investors against an inside few,
25 or one class of investors from the encroachments of another

1 the Court has ample power to adjust the remedy to meet the
2 need.

3 That power is ample for the exigencies of varying
4 situations. It is not dependent on express statutory
5 provisions, it inheres in the jurisdiction of a Court of
6 bankruptcy.

7 The necessity for its exercise is based on the
8 responsibility of the Court before entering an order of
9 confirmation to be satisfied that the plan is in practical
10 incidence embodies a fair and equitable bargain openly arrived
11 at and devoid of overreaching however subtle".

12 In City of Avon Park, all of the professional fees at
13 issue were unpaid upon confirmation. Nevertheless the Supreme
14 Court's mandate to review professional fees in a municipal
15 case was not so spineless as to permit an exception for paid
16 fees. Rather, the Supreme Court's mandate is imperative.

17 This Court must abide by it with the greatest
18 consideration and care. That is particularly so in this case
19 because it appears that the fees will exceed \$100,000,000.
20 Accordingly, the Court concludes that it has the obligation as
21 a condition of confirming the city's plan to determine that
22 the professional fees for which the city is obligated in
23 connection with this case, whether paid or unpaid, are
24 disclosed and reasonable.

1 obligation to review fees to its obligation to determine
2 whether the plan is fair and equitable. Accordingly, the
3 Court cannot outsource this responsibility to the fee
4 examiner, it must make an independent determination that
5 Section 943(b)(3) is met.

6 The next question is how to review the fees in this case.
7 In In Re: Corcoran Hospital District, the Court found that the
8 debtor could satisfy Section 943(b)(3) through a
9 post-confirmation process to review fees for reasonableness --
10 reasonableness. This makes good sense in this case because
11 the fees will -- will continue to accrue post-confirmation.
12 Accordingly, to expedite confirmation, the Court will defer
13 this issue. The Court will later request the assistance of
14 counsel in establishing a mediation and litigation process for
15 determining the disclosure and reasonableness of the fees for
16 which the city is obligated.

17 There is another issue here that will have to be
18 addressed. As I noted, the reasonableness of fees is a
19 requirement for confirmation in Chapter 9. This is unlike
20 Chapter 11 where objections to fees are not confirmation
21 objections.

22 The general deadline to object to this city's plan was
23 May 12, 2014. And for bond holders and retirees it was July
24 11, 2014. As far as the Court can determine, only one party,

1 in this case.

2 So the issue becomes whether everyone else in the case
3 has waived the issue. This problem would include, the Court
4 might add, the Detroit Firefighters Association which recently
5 issued a premature counter productive and inaccurate press
6 release criticizing the Court's processing of the fee issue.

7 Within the next few days the Court will establish a
8 process to review fees which it will do with the help of
9 counsel, including counsel for the DFFA should it choose to
10 participate. As part of that process the Court will invite
11 briefing on this waiver issue.

12 In the meantime until this process is established and the
13 Court orders otherwise, the Court's order of October 31, 2014
14 prohibiting the filing of papers relating to the fee issue
15 remains in effect. The Court, however, reaffirms that even if
16 there has been such a waiver, the Court intends to fulfill its
17 independent obligation to review the reasonableness and
18 disclosure of fees.

19 As noted, two classes of claims voted to reject the plan.
20 Class 14, the other unsecured claims, and Class 15, the
21 convenience claims under \$25,000.

22 Section 1129(b) allows the Court to confirm the plan
23 despite those dissenting class votes. With respect to those
24 dissenting classes, "if the plan does not discriminate

25 unfairly and is fair and equitable"

1 The Court will now address the unfair discrimination test
2 and then the fair and equitable test next. To analyze the
3 unfair discrimination issue, the first step is to determine
4 the recoveries for each unsecured class in the plan. The
5 second step is to determine whether there is any
6 discrimination against any of the rejecting classes. If so,
7 the final step is to determine whether the discrimination is
8 unfair.

9 Here, the recoveries for the rejecting classes are 13%
10 for Class 14, and 25% for Class 15. The next step is to
11 identify any discrimination by identifying the classes of
12 unsecured claims that have higher recovery than the classes of
13 the rejecting -- than the recoveries of the rejecting classes.

14 It is readily apparent that the plan does discriminate in
15 favor of Class 7, the LTGO claims with a 41% recovery, Class
16 8, the UTGO claims with a 74% recovery, and Class 17, the 36th
17 District Court claims with a 33% recovery.

18 Calculating a percentage recovery for the pension claims
19 in Classes 10 and 11 is complex. The city's disclosure
20 statement which the Court approved, stated that the recoveries
21 are 59% for PFRS, and 60% for GRS.

22 Based on a number of complex arguments, however, the city
23 now asserts that the true recovery percentages are much lower
24 and that there is no discrimination in favor of the pension

1 resolve the difficult issues raised here.

2 The Court concludes that even if the pension classes
3 recoveries are what the disclosure statement declares, the
4 resulting discrimination against the unsecured and convenience
5 classes is not unfair.

6 In connection with this final step, the Court must
7 determine the meaning of the phrase unfair discrimination in
8 Section 1129(b). The Court concludes that fairness and
9 unfairness are matters of conscience. And that fairness is a
10 matter of relying upon the judgment of conscience. Whether a
11 discrimination in a plan is unfair is a question that requires
12 the Court to focus on the judgment of its conscience regarding
13 that discrimination.

14 Several factors will naturally inform this judgment.
15 These factors include the circumstances that bear upon the
16 fairness of the discrimination in light of the purpose of
17 Chapter 9 which is to adjust an insolvency -- an insolvent
18 municipality's debt so that it can provide adequate municipal
19 services.

20 These factors also naturally include the Court's
21 experience, education, and sense of morality. That is what
22 the Court meant in its eligibility opinion when it addressed
23 the potential for the impairment of pension rights in the
24 city's plan. It stated that when considering any such

1 judicious legal and equitable considerations of the interests
2 of the city and all of its creditors as well as the laws of
3 the State of Michigan".

4 The Court concludes that Congress intended this approach
5 to unfair discrimination. Congress certainly could have
6 established in Section 1129(b) a more specific standard to
7 determine unfair discrimination, including any of the more
8 specific standards adopted in the case law. The sole
9 statutory test, however, is whether the discrimination is
10 unfair.

11 The Court will first address the fairness of the
12 discrimination in the plan in favor of the pension classes.
13 It will then discuss the fairness of the discrimination in
14 favor of the UTGO, LTGO, and 36th District Court classes.

15 The Court finds that the city has demonstrated by a --
16 has demonstrated a substantial mission related justification
17 to propose a higher recovery to its pension claimants. The
18 city is a municipal service enterprise. Viewed broadly its
19 mission is to provide municipal services to residents and
20 visitors, to promote their health, welfare, and safety.

21 Its employees and retirees are and were the backbone of
22 the structures by which the city fulfills its mission. The
23 city therefore has a strong interest in preserving its
24 relationships with its employees and in enhancing their
25 motivation consistent with its financial resources.

1 The city has reasonably and properly concluded that its
2 discrimination in favor of the pension claims in the plan is
3 necessary to its mission. In contrast the city has no similar
4 mission related investment in its relationships with its other
5 unsecured creditors in Classes 14 and 15.

6 Second, the city is an agency of the State of Michigan.
7 Its existence, its mission, its means of fulfilling that
8 mission are all subject to the provisions of the Constitution
9 and the laws of the State of Michigan. Among these provisions
10 is Article 9, Section 4 of the Michigan Constitution which
11 singles out municipal pensions claims for special protection.

12 In the Court's eligibility opinion, it held that because
13 of a supremacy clause of the United States Constitution this
14 specific protection of the state constitution is not entitled
15 to vindication in a federal bankruptcy proceeding.
16 Nevertheless, that provision of the Michigan Constitution does
17 express the considered judgment of the people of the State of
18 Michigan.

19 The Court concludes that in determining the fairness of
20 the discrimination against unsecured claims proposed in the
21 city's plan, this judgment of the people of the State of
22 Michigan is entitled to substantial deference.

23 Another consideration that appeals to the Court's
24 conscience is the reasonable expectation of the parties.

25 Generally unsecured creditors reasonably expect similar

1 treatment in bankruptcy. The differences here, however -- the
2 difference here however, is that the Michigan Constitution
3 gives notice to all unsecured creditors of a municipality that
4 the rights of pension creditors are distinct even if their
5 pension claims are unsecured.

6 That constitutional notice reasonably justifies the
7 enhanced expectations of the pension creditors in this case.
8 At the same time that notice should also lower the reasonable
9 expectations of other unsecured creditors in the case. And
10 final consideration also suggests that this discrimination is
11 not unfair.

12 The Court has already observed here that the city's plan
13 is largely a collection of inter connected settlements. Mr.
14 Montgomery, counsel for the retiree committee astutely argued
15 that if each of the settlements in the plan is reasonable,
16 then the resulting discrimination in the plan must be fair,
17 the Court agrees.

18 The factors that inform the reasonableness of each
19 individual settlement are the same that inform the Court's
20 judgment about whether the resulting discrimination is fair.
21 Here, the classes that did not settle and -- and instead
22 rejected the plan, are two classes of general unsecured
23 claims. There is however, nothing about those claims that
24 warrants any favorable consideration than the Court's unfair
25 discrimination analysis. In the Court's judgment therefore

1 the discrimination in the city's plan of adjustment in favor
2 of the pension creditors is not unfair.

3 The Court comes to the same conclusion about the -- the
4 discrimination in the plan in favor of the UTGO, LTGO, and 36th
5 District Court classes. The Court has already found that
6 these settlements are reasonable settlements. They fairly and
7 reasonably reflect the strengths and weaknesses of the
8 creditors' claims and the city's defenses, the complexity and
9 expense of possible litigation, and collectibility issues.

10 These considerations also justify discriminating in their
11 favor and against other unsecured claims and the convenience
12 claims. The Court only adds that the city has a mission
13 related reason to favor the 36th District Court claim due to
14 its continuing legal and funding relationship with that Court.
15 Accordingly, the Court finds that the city's plan does not
16 unfairly discriminate against the two rejecting unsecured
17 Classes 14 and 15.

18 Let's stand for one minute and relax.

19 THE CLERK: Please be seated.

20 THE COURT: The Court will now discuss whether the
21 plan is fair and equitable to the dissenting Classes 14 and
22 15. To properly determine the meaning of this test, it is
23 important to understand its affect.

24 In practical consequence the law allows the Judge who has
25 no stake in the outcome of the plan to substitute his or her

1 own judgment about the fairness and equity of the plan for the
2 judgment of the creditors who have every stake in the outcome.
3 Ultimately the issue is whether the Court should force a debt
4 adjustment on unwilling creditors. We colloquially call this
5 cram down. That is the power that the city requests the Court
6 to exercise here.

7 The language fair and equitable suggests the same kind of
8 process of adjudication that the Court just discussed for the
9 fair -- for the unfair discrimination test. Indeed the words
10 of these two requirements overlap somewhat but the fair and
11 equitable test has a broader focus as the Court will discuss
12 in a moment.

13 In American United Mutual Life Insurance Company v City
14 of Avon Park, Florida which the Court discussed earlier, the
15 Supreme Court reviewed at length the Bankruptcy Court's role
16 in determining whether a Chapter 9 plan is fair and equitable.
17 The Court concludes that under City of Avon Park the city's
18 plan is fair and equitable as to dissenting Classes 14 and 15.

19 That case first mandates the Court to investigate whether
20 there is evidence of any misconduct that would require the
21 Court's remedy as a condition of confirmation, or whether the
22 city or any class of creditors has committed any overreaching.

23 The Court readily finds that there is no such evidence in
24 this case. But under the City of Avon Park case, overriding

1 requires more than just the absence of misconduct. It must
2 also mean something more than what all of the other
3 confirmation requirements mean.

4 The Court concludes that the fair and equitable treatment
5 requirement asks this question. Are there circumstances in
6 the case that suggest to the Court's conscience that it is
7 fair and equitable to impose the plan on dissenting creditors
8 against their stated will.

9 The Court finds that there are such circumstances in this
10 case. First, it is appropriate to look at exactly how this
11 class reacted to the plan. Very few of the creditors in
12 Classes 14 and 15 filed objections to the plan. Although the
13 classes did vote to reject the plan, the margins were small.

14 In Class 14 the margin was slim, 51% rejecting, 49%
15 accepting. In Class 15 it was a bit more significant, 58%
16 rejecting, 42% accepting. But the numbers behind those
17 percentages tell a story here too.

18 The actual vote in Class 14 was 97 rejecting, 93
19 accepting. This means that if three rejecting votes had gone
20 the other way, the necessary majority in number would have
21 been achieved. The actual vote in Class 15 was 189 rejecting,
22 153 accepting. That means that if 19 rejecting creditors in
23 this class had accepted, the necessary majority in number
24 would have been reached.

1 equitable to confirm this plan over the dissent of literally a
2 handful of unsecured creditors, most of whom have claims under
3 \$25,000 when thousands of creditors with claims in the
4 billions of dollars support the plan. To the Court's
5 conscience this is fair and equitable and the Court so finds.

6 The Court accepts the likelihood that the dividend to the
7 creditors in Classes 14 and 15 will cause those creditors real
8 hardship. But the Court must analyze and balance the hardship
9 on the other side too.

10 A large number of people in this city are suffering
11 hardship because of what we have anticeptically called service
12 delivery insolvency. What this means is that the city is
13 unable to provide basic municipal services such as police,
14 fire, and EMS services to protect the health, safety -- health
15 and safety of the people here.

16 Detroit's inability to provide adequate municipal
17 services runs deep and has for years. It is inhumane and
18 intolerable and it must be fixed. This plan can fix these
19 problems and the city is committed to it.

20 So if to fix this problem, the Court must require these
21 few creditors that rejected the plan to nevertheless share in
22 the sacrifice that the other creditors have agreed to endure,
23 then so be it. There really is no choice here.

24 There are no viable alternatives to this plan that will
25 solve the city's problems and that at the same time pay more

1 to Classes 14 and 15 to get their support. To revitalize
2 itself for the good of all, the city and its people
3 desperately need the shared sacrifice that this plan will
4 impose on all of its creditors even these few rejecting
5 creditors. And the city and its people need it now.
6 Accordingly, the Court concludes that it should exercise its
7 power under the Bankruptcy Code to impose the plan of
8 adjustment in Classes 14 and 15 despite their dissenting
9 votes. The Court finds that the plan is fair and equitable as
10 to them.

11 The Court will now state its resolution of the objections
12 that the creditors with constitutional claims against the city
13 filed. The Court's written opinion will explain in depth the
14 Court's reasons for these conclusions.

15 The Court first concludes that the Fourteenth Amendment
16 does not provide a constitutional right to damages for a
17 constitutional violation. Accordingly, the Court overrules
18 the 1983 claimant's objection that Chapter 9 cannot provide
19 for the discharge of a claim under 42 USC Section 1983.

20 The Court further concludes that the Section 1983 claims
21 against individuals in their personal capacity are not claims
22 against the city. Accordingly, the Bankruptcy Code does not
23 permit a Chapter 9 plan to treat those claims nor does it
24 provide for their discharge.

1 obligates the city to defend and indemnify its officers on
2 these claims in their personal capacity, and that contract is
3 assumed in this bankruptcy, then that contractual obligation
4 survives the discharge and remains fully enforceable
5 post-confirmation. Otherwise the city's contractual
6 indemnification obligation is discharged in this bankruptcy.

7 To the extent that the city seeks to release its officers
8 from liability under the standards in the Dow Corning case,
9 the Court denies that. The city certainly has a strong
10 interest in the efficient and effective functioning of the
11 police department. The Court accepts that protecting its
12 officers from personal liability for Section 1983 claims is
13 necessary to that mission. However, the record is barren of
14 any evidence suggesting that the contractual indemnity
15 obligations that the city is assuming are inadequate to
16 accomplish that purpose.

17 A third party release -- release would deny injured
18 parties their just relief. There is no evidence that the
19 projection -- protection of a third party release for these
20 officers in addition to their indemnity is also necessary for
21 the proper functioning of the police department.

22 Finally, the Court concludes that the Fifth Amendment
23 does -- does establish a right to just compensation when a
24 municipality takes private property for public use. Chapter 9

1 case would result in less than just compensation to these
2 objecting claimants. There is, however, a ready solution.

3 Section 944(c)(1) gives the Court the discretion to
4 exempt debts from discharge in the confirmation order. At the
5 suggestion of the Attorney General to avoid any issue as to
6 the constitutionality of Chapter 9 in this respect, the Court
7 would use its authority under Section 944(c)(1) to order that
8 the objecting parties taking clause claims are exempt from
9 discharge. This ruling eliminates any constitutional grounds
10 to deny confirmation of the city's plan of adjustment. These
11 rulings will be reflected in the Court's order confirming the
12 plan.

13 The Court will now address the city's request for
14 approval of its exit financing. No party has objected to the
15 exit financing.

16 The Court requests the authority to borrow up to
17 \$325,000,000 as part of its exit from bankruptcy. The city
18 has recently stated, however, the intent to borrow only
19 \$275,000,000. The loan agreement requires an escrow reserve
20 of 27.5 million dollars. Barclay's Capital, the issuer, will
21 hold the notes but they will be sold or refinanced in the
22 municipal bond market within 150 days.

23 The notes are secured by the city's revenue from its
24 income tax which reduces its interest costs slightly. This

1 access the municipal bond market in the future should the need
2 arise.

3 From these loan proceeds the city will use \$120,000,000
4 for the post-petition loan to repay that, \$45,000,000 to repay
5 the outstanding swaps settlement obligation, and \$55,000,000
6 to pay the outstanding LTG -- LTGO obligation. The balance
7 will be used to begin to fund the restructuring --
8 restructuring and reinvestment initiatives.

9 As the Court will address in a moment these RRI's are
10 critically important to the feasibility of the plan and to the
11 city's future. The borrowing was approved by the city
12 council, the Michigan Finance Authority, and the local
13 emergency financial assistance loan board.

14 The Court finds that both the terms of the financing and
15 the uses of the loan are -- loan proceeds are reasonable. The
16 lender is acting in good faith. Accordingly, the financing
17 meets the requirements of the Bankruptcy Code, the Court
18 approves it.

19 The Court will now address feasibility. The Court
20 appointed expert Martha E.M. Kopacz on the -- the Court
21 appointed an expert, Martha E.M. Kopacz on the issue of
22 feasibility. Ms. Kopacz submitted a report and two
23 supplements. She testified regarding her observations,
24 conclusions, and recommendations.

1 Ms. Kopacz's testimony and to preclude her evidence relating
2 to alleged historical mismanagement and conduct -- misconduct
3 by the GRS and the PFRS. For reasons that the Court will
4 explain in its written opinion, both motions are denied.

5 The Court finds that Ms. Kopacz's reports and testimony
6 are fully credible and it accepts and adopts her findings with
7 the minor exception of her conclusions about the Court's
8 pacing of the case.

9 Ms. Kopacz adopted this test for feasibility in this
10 case. "Is it likely that the City of Detroit after
11 confirmation of the plan of adjustment, will be able to -- to
12 sustainably provide basic municipal services to the citizens
13 of Detroit and to meet the obligations contemplated in the
14 plan without the significant probability of default".

15 The Court concludes that this standard is the appropriate
16 standard for determining feasibility under Section 943(b)(7).
17 Accordingly, the Court adopts it.

18 Her opinion is that the city's plan is feasible as
19 required by Section 943(b)(7) and that the assumptions that
20 underlie the city's plan of adjustment projections regarding
21 its revenues, expenses, and plan payments are reasonable. In
22 Ms. Kopacz's initial report she concludes, "the POA and the
23 projections that support the POA are designed to allow the
24 city to continue to improve its level of service to the

1 and well considered.

2 If executed they will allow the city to deliver essential
3 services. It is my opinion that the city is beginning to
4 emerge from the service delivery insolvency referenced in
5 Judge Rhodes' opinion concerning eligibility".

6 In her second supplemental report she concludes, "my
7 opinion based on the information provided to me and my team
8 and certain testimony during the confirmation trial is the
9 current projections are within the range of reasonableness and
10 the plan of adjustment remains feasible".

11 Ms. Kopacz did, however, add this caution in her
12 supplemental -- second supplemental report. "I want to
13 emphasize, however, that there is little space remaining on
14 the continuum of reasonableness. The recent settlements and
15 the corresponding amendments to the plan of adjustment have
16 served the laudable goals of -- of efficiently resolving
17 disputes and garnering additional support for the plan of
18 adjustment.

19 Conversely they have imposed additional financial
20 obligations on the city. I have already expressed concerns
21 regarding the level of contingency provided for in the plan of
22 adjustment. The financial obligations associated with the
23 recent settlements only intensify this concern. While my
24 opinion is the plan of adjustment remains feasible and there

1 in the standard, there is no denying that the possibility of
2 default has increased.

3 It is not realistic or prudent to believe that the city
4 could take on any additional plan obligations and remain
5 within the continuum of reasonableness necessary to establish
6 feasibility".

7 Ms. Kopacz's testimony was to the same effect. Her
8 conclusions regarding the feasibility of the plan were
9 corroborated by the testimony from Rob Malhotra, Robert Cline,
10 Caroline Sallee, John Hill, Charles Moore, Kevyn Orr, council
11 President Jones, and Mayor Duggan.

12 In this case the evidence establishes that there are
13 three components to the feasibility of the plan and to the
14 ultimate success of the City of Detroit. They are one, a long
15 term workable financial plan. Two, the human and capital
16 resources to execute the plan. And three, the commitment to
17 implement the plan.

18 The emergency manager and his team working in conjunction
19 with the Mayor and his team have created a workable plan for
20 the city. It will be for the city council, the Mayor, and his
21 administration to implement the plan.

22 The Mayor testified that he and his team are fully
23 committed to implementing the plan and council President Jones
24 testified that the plan has the support of the city council.

25 The Court fully credits that testimony.

1 The Court finds further support for -- for the
2 feasibility of the plan and the establishment of the financial
3 review commission under PA 181 of 2014. The act gives the
4 commission the responsibility to insure that the city complies
5 with the plan of adjustment. It also gives the commission a
6 broad array of responsibilities and tools to oversee the
7 city's fiscal integrity.

8 For example, the commission has the authority to review
9 and approve the city's four year financial plans, contracts
10 over \$750,000, and all collective bargaining agreements. It
11 also appears to give oversight responsibility for the city's
12 pension funding obligations.

13 It cannot be emphasized enough that the long term
14 feasibility of the plan -- plan of adjustment will depend upon
15 the effectiveness of the financial review commission. This is
16 a matter of extraordinary weight and responsibility. It will
17 certainly require substantial budget resources and skilled
18 staffing for the commission.

19 The Court is satisfied that the state will provide the
20 commission with adequate resources to meet its
21 responsibilities. In conclusion therefore, the Court finds
22 that it is likely that the City of Detroit after the plan --
23 plan of adjustment will be able to sustainably provide basic
24 municipal services to the citizens of Detroit and to meet the
25 obligations contemplated in the plan without the significant

1 probability of default. Accordingly, the Court finds that the
2 city's plan of adjustment is feasible.

3 It appears that Ms. Kopacz's greatest concern for the
4 feasibility of the plan and for the future of the city arises
5 from the risks that the city retains regarding pension
6 funding. Ms. Kopacz states in her report, "the city must
7 continually -- must be continually mindful that a root cause
8 of the financial troubles that it now experiences is the
9 failure to properly address future pending obligations".

10 The Court shares that concern. What happened in Detroit
11 must never happen again. The hardship and anxiety that its
12 employees and retirees and their families have endured and
13 will continue to endure must never happen again. This must
14 never be repeated anywhere in this state. Therefore, the
15 Court's confirmation of this plan comes with three further
16 appeals.

17 The first is to the city's labor unions and retiree
18 associations. In its closing argument Mr. Bennett, the city's
19 attorney perceptively asserted that the goal of protecting
20 municipal pensions in this city and in this country requires
21 municipal labor to enhance its vigilance of municipal pension
22 funding.

23 He also implored labor to use its relationships with
24 municipal leadership to achieve that goal. The Court agrees.

25 The Court would only ask additionally labor to consider

1 whether this goal of protecting municipal pensions in the city
2 and indeed the broader goal of revitalizing the city suggests
3 that it should take a much longer and broader view of the best
4 interests of its members and retirees.

5 The second appeal is to the State of Michigan. The
6 Revised Municipal Finance Act unequivocally states that the
7 Michigan Department of Treasury is "directed to protect the
8 credit of this state and its municipalities". That's Michigan
9 Compiled Laws 141.2201.

10 The argument is powerful that this provision of state law
11 together with the constitutional prohibition on impairing
12 municipal -- municipal pensions, and the constitutional
13 mandate on pension funding requires the state to take full
14 responsibility to vigorously supervise and regulate its
15 municipalities to assure adequate pension funding.

16 The Michigan Constitution does not single out the
17 obligations of municipal bonds for protection in the same way
18 it protects pension rights. Bond obligations can no longer be
19 the only first budget municipal obligations in this state.

20 Moreover, the constitutional protection for municipal
21 pensions can only be realized through honest, complete and
22 realistic accounting and actuarial disclosures. Ms. Kopacz
23 made several specific and worthy recommendations that the
24 city, the pension plans, and the financial review commissions,

1 implementing.

2 The municipal employees and retirees of this city and
3 state need and deserve the state's robust commitment to that
4 obligation. The Court found here today that the state's
5 contribution of \$195,000,000 in exchange for a release of
6 liability on the pensioner's constitutional claim is a
7 reasonable settlement.

8 History will judge the correctness of this finding. And
9 it will judge that this finding was correct only if what
10 happened here in Detroit never happens again. The State of
11 Michigan can sustain that finding in history only by
12 fulfilling its constitutional, legal, and moral obligation to
13 assure that the municipalities in this state adequately fund
14 their pension obligations. If the state fails, history will
15 judge that this Court's approval of that settlement was a
16 massive mistake.

17 The third appeal is directly to the Governor. It relates
18 to -- to the composition of the financial review commission.
19 The Court has found that the responsibilities that PA 181
20 imposes on the commission will contribute to the feasibility
21 of the plan. The law by itself is not enough.

22 The law by itself is not enough. The effectiveness of
23 the commission in insuring the long term feasibility of the
24 plan and the city's fiscal health will require that its

25 members have the skill, standing, expertise, experience,

1 independence, and commitment that are the most outstanding
2 that can be found and beyond question.

3 This would be so under any circumstances. But one
4 particular circumstance makes this concern even more
5 compelling here. In Public Act 181, the Michigan legislature
6 chose to include on the nine member commission two elected
7 City of Detroit office holders.

8 At the commission level therefore the Mayor and the city
9 council President will advocate the city's position, not
10 provide oversight of it. That means that realistically only
11 seven of the nine members are truly independent. It also
12 means that only -- that the -- it also means that only the
13 seven independent members of the commission will carry out the
14 oversight function that the legislation contemplates. This is
15 a major problem.

16 Because the commission acts by majority vote, it will
17 take a super majority vote of the independent members, five
18 out of the seven, to disapprove or reject any action that the
19 city proposes for approval by the commission under state law.
20 This is a plain conflict of interest for the Mayor and the
21 city council President to have a vote.

22 It both skews the commission's voting and risks
23 undermining the commission's effectiveness in insuring the
24 implementation of the plan and the city's fiscal health and
25 integrity. Equally importantly, it also risks undermining the

1 public's perception of the legitimacy and independence of the
2 commission.

3 The Court believes that this problem requires that the
4 Governor appoint members of the commission who are fully
5 willing and able to exercise the independent skilled and
6 experienced judgment that PA 181 contemplates. The Court
7 therefore appeals to the Governor to appoint commission
8 members with these qualities.

9 That concludes the Court's decision confirming the city's
10 plan. This comes with thanks to many people. First, deeply
11 felt thanks to Chief Judge Rosen -- one second. Deeply felt
12 thanks to Chief Judge Rosen for his work as the mediator in
13 this case. Deeply felt thanks also to each of the mediators
14 on his team, Chief Judge -- I'm sorry, Judge Roberts, Judge
15 Cox, Judge Lawson, Judge Daniels, Judge Perris, Eugene Driker,
16 and David Coar.

17 These words of thanks cannot begin to express the depth
18 of gratitude that I and all of the parties and attorneys in --
19 in this case feel about what Chief Judge Rosen and his
20 mediation team put into this case. The work, the time, the
21 creativity, the commitment, the nights, the weekends, the
22 holidays.

23 Thanks also to Professor Gina Torelli. She
24 enthusiastically served as the mediator's consultant on
25 municipal bond issues. Her assistance was invaluable.

1 The settlements that the mediators assembled in this case
2 are extraordinary and unprecedented. Never before have
3 bankruptcy mediators proactively sought to marshal the
4 community's financial resources to solve a community problem.
5 Most importantly they knew that their work was not simply
6 about resolving a bankruptcy case, it was about fixing a
7 broken city. Where else -- where would we be, where would
8 this case be without them.

9 I have said publicly and repeat now, that the smartest
10 thing I did in this case was to ask Judge Rosen to be the
11 mediator. I don't know if he agrees with that. But I do
12 think that he would agree that the smartest thing that he did
13 as mediator was to assemble his team.

14 One of the unforeseen but fortuitous consequences of this
15 case has been the development of a true partnership between
16 the Bankruptcy Court and the District Court. This partnership
17 was essential to the efficient and expeditious resolution of
18 this case and arguably to the very future of the City of
19 Detroit. Thanks to the chief for having the wisdom,
20 foresight, and willingness to engage in this partnership with
21 us. I hope this partnership endures.

22 Thanks also to Judge Rosen, to the entire District Court,
23 and to Dave Weaver and his staff for their amazing and
24 gracious hospitalities. Thanks also to Katherine Gullo the
25 bankruptcy clerk and to her staff for their wonderful support

1 in the case.

2 On behalf of the parties in the case, thanks also must go
3 to the foundations and to the DIA for their generous and
4 unprecedented charitable commitments in this case. It is
5 unimaginable what the resolution of this case would have
6 looked like without them.

7 Profound thanks to the attorneys and other professionals
8 in this case. You conducted yourselves with the highest
9 degree of civility, respect, and professionalism, both to each
10 other and to the Court. At the same time you demonstrated
11 zealous advocacy as well as loyalty to your oaths and to your
12 clients.

13 Your work in this case is a model of the public service
14 role that lawyers and the legal profession perform in our
15 society. It has made me proud to be a part of the judicial
16 process and of the legal profession and each of you should
17 share in that pride.

18 Also on a more personal level, you made my job
19 manageable. Even fun sometimes. Thanks for that.

20 And here I want to single out Kevyn Orr for special
21 recognition and appreciation. His task was perhaps the most
22 challenging of all of us, yet he met that challenge with
23 skill, determination, and commitment, and at great personal
24 sacrifice. I hope that some day soon the city will recognize
25 the singular contribution that he made to its fresh start and

1 give him the credit that he truly deserves.

2 Thanks also to Dick Ravitch my consultant on feasibility.
3 His commitment, knowledge, wisdom, expertise, and spirit of
4 public service were remarkable and helped me to more fully
5 understand this case. I hope a way is found for him to
6 contribute to -- to the fiscal health and revitalization of
7 this city. He would be a valuable resource in any capacity.

8 Thanks to Marty Kopacz and her team. Under extraordinary
9 time pressures, she and they performed remarkable service for
10 me with grace and professionalism.

11 Thanks to Bob Fishman my fee examiner and his staff for
12 their skilled assistance on the delicate responsible --
13 responsibility that they took on and embraced.

14 Finally, this case proves that it takes a team and so I
15 want to thank and gush about my team, Caroline Fays, Kelly
16 Dexter, Chris Sicala, Ryan Hamstead, Cindy Person, and Alicia
17 Dobbins. You are simply the best, thank you.

18 We have talked a lot in this case about how -- about how
19 Chapter 9 is so different from all the other types of
20 bankruptcy. It is, but only around the edges. In fundamental
21 ways the -- the Detroit bankruptcy case is just like every one
22 of the other 30,609 bankruptcy cases that were filed in our
23 Court in 2013.

24 In every case we have a debtor who needs help, who made
25 mistakes, who took on warranted risks, who accepted bad

1 advice, who exercised bad judgment, who was too long in
2 denial, or who had just plain bad luck. But no matter. Our
3 society holds dear the value of a fresh start and of second
4 chances. That value is manifest with brilliant clarity in our
5 bankruptcy laws. And that value is manifested the same in
6 this \$18,000,000,000 case as it was in the no asset Chapter 7
7 cases that were filed just before and just after this case on
8 July 18th, 2013.

9 To the current leadership of the city, you are about to
10 get your city back from us in the bankruptcy world. We give
11 it back to you with a fresh start and second chance that the
12 city needs and deserves under our federal bankruptcy laws. We
13 hope we helped.

14 It is now on you to implement the plan. I have found
15 that you will do that. Please make me right. It is in the
16 city's best interest, the city's true and full fresh start
17 depends on it.

18 Before I conclude, I want to address the people of the
19 City of Detroit whose passion for the city is remarkable in
20 its breath, in its expression, and in -- and in its unwavering
21 endurance. I just said that your -- your leaders are about to
22 get the city back. Actually of course it is you who are about
23 to get your city back, it is your city.

24 A large number of you told me that you were angry that
25 your city was taken away from you and put into bankruptcy.

1 You told me in your Court papers, you told me in your
2 statements in Court, you told me in your blogs, letters, and
3 protests. I heard you. I urge you now not to forget your
4 anger.

5 Your enduring and collective memory of what happened
6 here, and your memory of your anger about it will be exactly
7 what will prevent this from ever happening again. It must
8 never happen again.

9 When Fredia Butler testified during the confirmation
10 hearing she quoted the great wisdom of Marian Wright Edelman
11 who said, "democracy is not a spectator sport".

12 And so I ask you for the good of the city's fresh start
13 to move past your anger, move past it, but join in the work
14 that is necessary to fix this city. Help your leaders do
15 that. It is your city.

16 This leads to my final thought. We have used the phrase
17 grand bargain to describe the group of agreements that will
18 fix the city's pension problem. That is certainly -- that
19 description is entirely fitting.

20 In our nation we join together in the promise and in the
21 idea -- ideal of a much grander bargain. It is the bargain by
22 which we interact with each other and with our government all
23 for the common good. That grander bargain enshrined in our
24 Constitution is democracy. Now is the time to restore

1 participate in it, and I hope that you will soon realize its
2 full potential.

3 We will now take a brief recess. We will reconvene at
4 3:00 for a brief status conference with the lawyers to discuss
5 the next steps. We will discuss when and how to get a
6 confirmation order -- order entered and some other matters.
7 Sir.

8 MR. HEIMAN: Forgive me, Your Honor. I -- I would
9 like just an extra minute if I may. David Heiman, Jones, Day
10 on behalf of the city.

11 First, I'd like -- this is clearly an historic and
12 momentous occasion that deserves every bit of your brilliant
13 remarks as well as your acknowledgments. Somehow conveniently
14 you left yourself out and I do want to make it clear to
15 everybody in this courtroom that we would not be here today
16 but for your guidance, your pushing and prodding, your
17 direction, your intelligence, your sense of fairness, your
18 sense of humor, and that pacing that you referred to which to
19 me is among the most important things of all.

20 The winners here are the people of Detroit, the people of
21 the Metropolitan area, the State of Michigan, and also in my
22 mind the American legal system particularly the bankruptcy
23 construct. So I want to thank you on behalf of everybody here
24 and if I may, I want to thank everybody here, people in -- the
25 people who helped do this will never be properly acknowledged.

1 I want to thank Governor Rick Snyder and his hard working
2 team because they had the courage to start this. I want to
3 thank the Mayor, the city council, all of their hard working
4 people. Obviously Kevyn who started off with skepticism and
5 scorn and had a very thick skin to lead us through this. And
6 I want to thank his wife who sacrificed more than anybody who
7 happens to be in the courtroom today in the jury box.

8 The thank yous go on and on obviously and I'm leaving
9 many people out. But you've covered it and I just really
10 wanted to make sure that you get the proper acknowledgment
11 that you richly deserve. So thank you very much.

12 THE COURT: Well, you're welcome. All right. In
13 light of that, let's reconvene at 3:05.

14 THE CLERK: Court is in recess.

15 (Court in Recess at 2:47 p.m.; Resume at 3:05 p.m.)

16 THE CLERK: All rise. Court is in session. Please
17 be seated. Recalling case number 13-53846, City of Detroit,
18 Michigan.

19 THE COURT: I think our next task is the entry of a
20 confirmation order. My thought was to have -- or to set at
21 least an actual hearing on that and to accommodate whatever
22 interest the city has in the prompt entry of an order.

23 Based on the opinion I gave, I think there are probably
24 at least three changes that need to be made in the proposed

1 fees, the non-dischargeability of the takings clause claims
2 and the clarification that claims against officers in their
3 individual capacity are not included in the plan, not
4 discharged, or -- or released.

5 I actually took the liberty of crafting some proposed
6 language, but only for your consideration. It might
7 facilitate your re-drafting of the order and I'm -- I'm
8 willing to share this with you.

9 So let me just ask you when you would like to have this
10 hearing. Before you answer, I should also tell you that this
11 hearing will also be a status conference on some other issues
12 which I want to give you fair warning about as well. So you
13 tell me when -- when do you want to do this. I'm available
14 Monday or Wednesday. Tuesday, of course, is the federal
15 holiday.

16 MS. LENNOX: Either of those days would certainly be
17 fine for the city, Your Honor. As Your Honor noted, we do
18 have an interest in sort of a prompt issuance of an order. So
19 we're happy to accommodate the Court's schedule.

20 THE COURT: Well -- well, let's do it Monday then.

21 MS. LENNOX: Okay.

22 THE COURT: What time would you suggest?

23 MS. LENNOX: Probably -- well, what else do you want
24 to have on for a conference, Your Honor? How long might this

25 take?

1 THE COURT: An hour at the very most.

2 MS. LENNOX: Okay. In that case, to allow people to
3 travel in the morning perhaps later morning, early afternoon,
4 or mid-morning.

5 THE COURT: The only thing I'm thinking about --
6 well, no. Shall we say noon then?

7 MS. LENNOX: Thank you.

8 THE COURT: All right. So the other things I want
9 to discuss on Monday is whether any parties object to the
10 waiver of the 14 day stay and to work that through if
11 necessary.

12 MS. LENNOX: Okay.

13 THE COURT: Whether any parties intend to file a
14 motion for stay pending appeal and processing that.

15 MS. LENNOX: Okay.

16 THE COURT: I'd like to get from you a list of the
17 implementation tasks that have to be accomplished in order to
18 get to effective date.

19 MS. LENNOX: How would you like that? We -- we have
20 an exceedingly lengthy task list that we are working on right
21 now. Would Your Honor like something very abbreviated filed,
22 sent to chambers, just discussed?

23 THE COURT: You can just bring it.

24 MS. LENNOX: Okay.

25 THE COURT: And the schedule of how you propose to
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1 accomplish those tasks.

2 MS. LENNOX: Uh-huh.

3 THE COURT: I'd like to know whether anyone foresees
4 any issues with regard to the implementation of the plan and
5 getting to an effective date that might require the Court's
6 resolution.

7 MS. LENNOX: Okay.

8 THE COURT: As well as your latest projection of
9 when your effective date might be.

10 MS. LENNOX: Uh-huh.

11 THE COURT: I'd like to know what the status of the
12 continuing claims objection process is that you foresee and
13 you might want to have someone from Foley here to address
14 that.

15 MS. LENNOX: Certainly.

16 THE COURT: We will recall for ourselves the status
17 of any other post-confirmation litigation. Any other issues
18 that we need to address and perhaps most delicately we're
19 going to create the process for determining the reasonableness
20 and disclosure of fees.

21 MS. LENNOX: Okay.

22 THE COURT: Is the attorney for the DFFA here? Ms.
23 Lennox, can I impose upon you to extend a special invitation
24 to that attorney to be here at this conference to participate
25 in the crafting of that process?

1 MS. LENNOX: Yes, I will do that, Your Honor.

2 THE COURT: So that's the agenda that I foresaw for
3 this conference on Monday. Is there anything else you might
4 want to add or that anyone might want to add?

5 MS. LENNOX: I think that's pretty comprehensive
6 from our perspective, Your Honor.

7 THE COURT: Mr. Howell.

8 MR. HOWELL: Your Honor, Steven Howell, Dickinson,
9 Wright special assistant Attorney General appearing on behalf
10 of the state. We still have a couple of hurdles we're working
11 on with the state contribution agreement conditions that we
12 are hopeful so maybe if we have that on the agenda as well,
13 we're going to continue to try to work those out. We're
14 having -- we still have an issue with --

15 THE COURT: Yeah. I have to say that I was very
16 distressed to hear that there are still open issues. And that
17 parties are possibly reopening negotiations that we've long
18 since thought were closed and resolved by those parties'
19 agreement to this plan.

20 MR. HOWELL: Yes. We -- we -- we would concur in
21 that we think that, you know, the agreements have been out
22 there for some time and just recently some issues have come
23 up. We're working very hard to get through them, but we're
24 still struggling with the UAW and to a lesser extent AFSCME.

25 THE COURT: Well, are the -- are the issues that

1 recently came up, or are they issues that someone decided to
2 re-negotiate?

3 MR. HOWELL: I -- I would say that it's a
4 combination.

5 THE COURT: Well, all right. I strongly encourage
6 you to get those resolved by noon on Monday.

7 MR. HOWELL: We will continue to do that, but if we
8 can't we will discuss it with the Court.

9 THE COURT: If you need my help the morning of
10 Monday, I will be in my office.

11 MR. HOWELL: Okay. Thank you, Your Honor. I just
12 wanted to make sure we brought that to your attention.

13 THE COURT: Thank you.

14 MR. HOWELL: Today and that should be on the agenda.
15 Thank you.

16 THE COURT: Anything else for my attention today?
17 Mr. Perez.

18 MR. PEREZ: Yeah. Your Honor, just a very quick
19 question. Alfredo Perez on behalf of FGIC.

20 As the Court is aware, because of the timing the
21 confirmation order probably includes more things that -- that
22 -- than normally you would put in a conformation order. Is
23 the Court -- do I gather from your comments that the Court is
24 inclined to -- has reviewed the order, is inclined to enter
25 the form of order with the changes here or --

1 THE COURT: Well, this is something I was going to
2 discuss on Monday. I -- I do not want, and it would be
3 inappropriate for this order to constitute the Court's opinion
4 on confirmation.

5 MR. PEREZ: Right.

6 THE COURT: I'm going to issue an opinion on
7 confirmation. And -- and so having said that, I think the
8 recitals in the order ought to be kept to the minimum that you
9 all think you need --

10 MR. PEREZ: Right.

11 THE COURT: -- to accomplish what you think that
12 order needs to accomplish.

13 MR. PEREZ: Right. And -- and Your Honor, and just
14 to -- I'm sure the Court is aware, but just to be perfectly
15 blunt. The -- the deal continued to change a little bit after
16 the eighth plan was -- was filed, not in a material way, but
17 significant.

18 THE COURT: Right.

19 MR. PEREZ: And -- and so the confirmation order
20 reflects the continued movement.

21 THE COURT: And it has to.

22 MR. PEREZ: Okay. Just as long as the Court's aware
23 of that.

24 THE COURT: All of that is just -- all of that is

25 just fine.

1 MR. PEREZ: All right. Thank you, Your Honor.

2 THE COURT: Ms. Brimer.

3 MS. BRIMER: Good afternoon, Your Honor. Lynn M.
4 Brimer appearing on behalf of the Retired Detroit Police
5 Members Association. Your Honor, we are one of the parties
6 that has not yet provided the support and settlement agreement
7 to the state.

8 THE COURT: That is very distressing to me.

9 MS. BRIMER: We have executed it. At the time the
10 city circulated a proposed order, I advised counsel for the
11 city that the order failed to adequately address the
12 settlement between the city and my client.

13 Because I believe that there are certain issues that are
14 subject to mediation and committee confidentiality, I was
15 reluctant to file a direct objection to that and put those in
16 the record. I am one, more than prepared to address those
17 issues with the Court in chambers with the appropriate parties
18 who I think are all here. I'm just seeking an order that
19 adequately protects our settlement.

20 THE COURT: All I can tell you -- I can tell you two
21 things, Ms. Brimer. First, I wish you had brought this
22 unresolved issue to my attention sometime before the
23 conclusion of my opinion on confirmation.

24 Second, you have until Monday at noon to get it resolved.

25 If you want my help Monday morning, I'm happy to give it to
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1 you.

2 MS. BRIMER: Well, and --

3 THE COURT: I strongly encourage you to work as
4 diligently as necessary in the meantime to get it done. Is
5 there anything else you'd like me to say, or have I said
6 enough?

7 MS. BRIMER: Yeah, and other than the fact, Your
8 Honor, that unfortunately I'm out of town on Monday,
9 unavoidably so I will do my best.

10 THE COURT: Well, then you have until whenever you
11 leave.

12 MS. BRIMER: Yeah. Thank you, Your Honor.

13 THE COURT: Anybody else have anything? All right.
14 Then what I would like to do is come down off of this bench
15 and personally greet and thank each and every one of you who
16 have stuck around and express to you on a more personal basis
17 my thanks and appreciation for your help here. Is that okay?
18 All right. Let's go off the record.

19 (Court Adjourned at 3:16 p.m.)
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7 We certify that the foregoing is a correct transcript from the
8 electronic sound recording of the proceedings in the
9 above-entitled matter.

10
11 /s/Deborah L. Kremlick, CER-4872
12 Letrice Calloway
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Dated: 11-12-14